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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/367,019	10/14/1999	PHILIPPE BOYE	10350/168	3779

1912 7590 10/20/2004

AMSTER, ROTHSTEIN & EBENSTEIN  
90 PARK AVENUE  
NEW YORK, NY 10016

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/367,019

Applicant(s)

BOYE, PHILIPPE

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-34 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on Claims 9 – 34 are pending. Claims 9 – 17 are withdrawn from consideration as being drawn to a nonelected invention.
2. The applicant's arguments are sufficient to overcome the 35 USC 103 rejection to the claims based on Pernick (5,735,145) in view of MacIntyre (3,575,776). As argued by the applicant (response, pages 10 – 12) it would not be obvious to one of ordinary skill in the art to add linking threads to the knit fabric disclosed by Pernick since adding linking threads would require the fabric to be knitted together in a completely different knit pattern than the one disclosed by Pernick. Further, MacIntyre disclose weaving together three woven layers to form the composite fabric. Therefore, MacIntyre does not teach using knit fabrics, but a woven fabrics instead. Hence, the disclosure would not teach one of ordinary skill in the art how to combine the spacer layer with the knit layers taught by Pernick.

### ***Claim Rejections - 35 USC § 112***

3. Claims 18 – 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. The claims are indefinite since it is unclear if the applicant intends to positively claim the “air circulating means” or if the claimed fabric just needs to be able to operate with an “air circulating means”? In each of the independent claims the applicant recites that the “textile fabric article [is] operable with [an] air circulation means”, then further recites the air circulating means communicates with the intermediate air space in the textile fabric. Additional claims

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recite limitations requiring the air circulating means to include an entrance coupling and an exit coupling, and a diffusion zone between the entrance and exit couplings. Therefore, it is unclear if the entrance and exit couplings and diffusion zone are actually a part of the air circulating means or a part of the textile fabric. Further, it is also unclear if the applicant is positively claiming the air circulating means and all the features claimed with respect to the air circulating means. Since the claim currently states that the fabric is “operable” with an air circulation this limitation is considered to only require that a textile fabric is capable of being used with an air circulating means. Thus, the limitations drawn to the air circulating means comprising an entrance and exit coupling and diffusion zone are not positive limitations either and the fabric only needs to be capable of being used with these structures. Should the applicant positively recite the air circulating means so that the features related to the air circulating means are positively recited then the claims would be allowable over the prior art. Since the phrase “operable with air circulation means” is in all the independent claims, claims 18 – 34 are rejected.

5. Claims 19 and 26 are indefinite since the claims recite that the textile fabric can be a garment, seat covering, bed covering, or a sleeping bag, while the independent claims they depend from limit the fabric to a garment which protects and encloses a portion of the human body. A seat covering, bed covering, and sleeping bags are not considered to be types of garments.

6. Claims 18 and 20 are indefinite since the claims do not appear to be complete sentences. Claim 18 ends with the word “said” which makes it appear that the claim is incomplete. Are these claims finished or is there more to the claim?

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo  
October 16, 2004



CHERYL A. JUSKA  
PRIMARY EXAMINER